

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 20-cr-2126 DHU

KENDALE JOHNSON,

Defendant.

UNOPPOSED MOTION TO CONTINUE JANUARY 9, 2023 TRIAL

Defendant Kendale Johnson moves this Court to vacate and continue the trial of this matter now set on the January 9, 2023 trailing docket for approximately sixty (60) days. As grounds for this motion, the Defendant states as follows:

1. On October 2, 2020, Mr. Johnson was indicted and charged with being a Felon in Possession of a Firearm and Ammunition violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B) and using and carrying a firearm during and in relation to a drug trafficking crime in violation and possessing a firearm in furtherance of such crime in violation of 18 U.S.C. § 922(g)(1) and 942. [Doc. 4]
2. The undersigned counsel was appointed to represent Mr. Johnson on January 19, 2022. [Doc. 29]
3. This matter is currently scheduled for Jury Selection and Trial on the Court's January 9, 2023, trailing docket, [Doc. 36]
4. The Defendant received discovery from the United States on, or about, January 27, 2022, which consists of numerous police reports and other documents, as well as photos, video and audio, all totaling more than 29 GB of data.

5. Additionally, on April 11, 2022, the United States made available additional discovery material, consisting of approximately 300 pages of material, which alludes to additional related investigation efforts into alleged crimes not part of the current indictment.

6. Defendant's counsel has now reviewed this discovery material, discussed the matter with the Defendant, and the parties have engaged in plea discussions. The parties anticipate that they will be able to resolve this case without the need for trial and have discussed the general terms of a plea agreement.

7. The United States is in the process of preparing a written plea offer to provide to Defendant's counsel. However, potential approvals and additional negotiations will require more time to complete.

8. Mr. Johnson therefore requests a continuance of the January 9, 2023, trial to allow his counsel sufficient time to conduct plea negotiations with the Government, and for the parties to either agree on the form of a written plea agreement and schedule a change of plea setting with the Court or prepare for trial.

9. For these reasons, it is believed that the requested continuance is the absolute minimum time necessary for the Defendant's counsel to provide effective assistance of counsel to Mr. Johnson in this case. Counsel cannot and will not be ready for trial for at least thirty (30) days. The requested continuance is the minimum amount of time necessary.

10. The continuance of this matter will serve the ends of justice and outweigh the best interest of the public and the defendant in a speedy trial by affording the Defendant the opportunity to conduct his own investigation into the allegations of this matter, and to either prepare for trial or negotiate a plea agreement whereby his exposure may be limited and judicial economy advanced. Accordingly, the continuance sought by the Defendant is appropriate under 18 U.S.C.

§3161(h)(7)(A), (B)(iv). *See United States v. Toombs*, 574 F.3d 1262, 1268-69, 71-73 (10th Cir. 2009); *United States v. Hernandez-Mejia*, 406 Fed. Appx. 330 (10th Cir. 2011) (unpublished).

11. The Defendant understands that the time between this motion and the date of jury selection shall be excluded for speedy trial purposes under 18 U.S.C. §3161(h)(7)(D).

12. AUSA Novaline Wilson does not oppose this motion.

WHEREFORE, Defendant moves that the Court vacate and continue the trial of this matter currently set on January 9, 2023, for approximately thirty (30) days and continue all pretrial deadlines until further order of this Court.

Respectfully submitted,

/s/ Donald F. Kochersberger III

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Attorney for Defendant Kendale Johnson

I HEREBY CERTIFY that on the 9th day of December, 2022, I filed the foregoing electronically through the CM/ECF system, which caused all counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

/s/ Donald F. Kochersberger III

Donald F. Kochersberger III
Attorney for Defendant